

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

BYRON FRANCIS, JR. * CIVIL ACTION NO.:
*
VERSUS * JUDGE: _____
*
LAFAYETTE PARISH SHERIFF'S * MAGISTRATE JUDGE: _____
OFFICE

PETITION FOR REMOVAL

NOW INTO COURT, through undersigned counsel, comes Sheriff Mark Garber as Sheriff of the Lafayette Parish Sheriff's Office, Defendant in the State Court suit filed by Byron Francis, Jr., and now pending in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, bearing Docket Number C-20224691 "I", who files this Petition for Removal of the suit from the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, to the United States District for the Western District of Louisiana, and who respectfully avers:

1.

Plaintiff filed this action against Lafayette Parish Sheriff's Office in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, and it is now pending therein under Docket Number "C-20224691-I".

2.

On or about November 2, 2022, Defendant was served with Plaintiff's Petition. Therefore, pursuant to 28 USC §1446(b), this Petition for Removal is filed within thirty days of receipt of Plaintiff's initial state Court pleading.

3.

The Petition alleges the elements of a claim arising under 42 U.S.C. §1983. Specifically the Petition alleges that Sheriff deputies acting in the course of their employment committed intentional acts of excessive force, which allegations encompass the elements of a claim under 42 U.S.C. §1983. As such, this is a civil action over which this Honorable Court has subject matter jurisdiction based on federal question jurisdiction under 28 USC §1331, and is an action that may be removed to this Honorable Court pursuant to 28 USC §1441(a) and §1332(a), in that it is a civil action arising under the Constitution, laws or treaties of the United States.

4.

Based upon the Petition, and upon information and belief, Plaintiff is and was at the time of filing a person of the full age of majority domiciled in Lafayette Parish, Louisiana.

5.

At the commencement of this action and since that time, Defendant, Sheriff Mark Garber as Sheriff of the Lafayette Parish

Sheriff's Office, is a local government entity domiciled in Lafayette Parish, Louisiana.

6.

The time within which Petitioner is required to file this Petition in order to remove this cause to this Court has not yet expired. Petitioner at all times reserves his rights to contest jurisdiction, venue, sufficiency of service and citation and any other defense which it may have as respects the main demand.

7.

Attached as Exhibit "A" is the Plaintiff's Petition served upon Defendant, and as Exhibit ""B" the Citation of Service.

8.

Sheriff Mark Garber as Sheriff of the Lafayette Parish Sheriff's Office desires to remove to this Court the proceeding now pending in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, under and by virtue of the Acts of Congress of the United States of America and the United States Constitution, in particular, 28 U.S.C. §1331 and 28 U.S.C. §1446.

WHEREFORE, Sheriff Mark Garber as Sheriff of the Lafayette Parish Sheriff's Office, prays that further proceedings in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, be discontinued and that the suit be removed to the United States District Court for the Western District of Louisiana as the law in such cases provides, and that this Court enter any

necessary orders of process so that this suit may proceed as if it had been originally commenced in this Court.

Respectfully submitted:

MAHTOOK & LAFLEUR, LLC



KAY A. THEUNISSEN, #17448

Mailing Address:

Post Office Box 3089

Lafayette, Louisiana 70502

Physical Address:

600 Jefferson Street

Suite 1000

Lafayette, Louisiana 70501

Tel: (337) 266-2189

Fax: (337) 266-2303

Email: ktheunissen@mandllaw.com

Attorney for Defendant, Sheriff
Mark Garber as Sheriff of the
Lafayette Parish Sheriff's Office

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has this date been served on all counsel of record in this proceeding by:

() Hand Delivery () Prepaid U.S. Mail

() Facsimile () Federal Express

(X) Electronic Mail () CM/ECF Court Filing System

Lafayette, Louisiana this 30th day of November, 2022


KAY A. THEUNISSEN